



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/749,320	12/29/2003	Craig Kennedy	7432.185US01	1719

23552 7590 01/28/2005

MERCHANT & GOULD PC
P.O. BOX 2903
MINNEAPOLIS, MN 55402-0903

EXAMINER

PEDDER, DENNIS H

ART UNIT	PAPER NUMBER
----------	--------------

3612

DATE MAILED: 01/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.



Office Action Summary

Application No.

10/749,320

Applicant(s)

KENNEDY ET AL.

Examiner

Dennis H. Pedder

Art Unit

3612

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-32 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-32 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 29 December 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Oath/Declaration

1. The oath or declaration is defective. A new oath or declaration in compliance with 37 CFR 1.67(a) identifying this application by application number and filing date is required. See MPEP §§ 602.01 and 602.02.

The oath or declaration is defective because:

Non-initialed and/or non-dated alterations have been made to the oath or declaration. See 37 CFR 1.52(c).

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1-32 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The claims are illogically recited. Claim 1 is not an all terrain vehicle fender, it contains a mounting assembly as well as fender body. Claim 1 is also illogical in that a first and second mounting assembly is not a "member", but multiple members.

Claims 56, 22 are illogical in reciting both first and second mounting assemblies, both being a single common bracket. In other words, there is therefore only one mounting assembly.

Claim 11 does not limit the subject matter of claim 1 under 35 USC 112, fourth paragraph, is confusing as a result, and should be rewritten in independent form if continued.

Art Unit: 3612

Claim 15 is inconsistent as it requires dependency on claim 12 for antecedent for the first and second locations and further in that the third location 61B does not engage the fender body, but the vehicle body as verified by claim 16, also lacking antecedent.

Claim 17 does not limit the subject matter of claim 1 (a fender) under 35 USC 112, fourth paragraph, is confusing as a result, and should be rewritten in independent form if continued.

Claim 18 is illogical as only one position is claimed and therefore the use of first and second mounting assemblies, each with different position, is inconsistent.

Claim 22 is illogically inconsistent with two mounting assemblies and only a single common bracket is recited. See also claim 26.

Claim 25 contains applicant comments and is thus confusing.

Claim 28 lacks frame of reference for “engaged” as in with what?

Claim 31 lacks antecedent for “mounting assembly” on line 12 as several are recited, lacks antecedent for “mounting” on line 14 and cannot be fully treated upon art due to these inconsistencies.

Claim 32 recites several fender bodies and that on line 7 is indefinite as a result.

Applicant’s claims should be carefully revised or replaced for these types of problems.

Specification

4. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: Claim 32.

Drawings

5. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the details of claim 32 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled “Replacement Sheet” in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

Art Unit: 3612

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1-3, 6-7, 10-13, 18-20, 22-24, 26-29 are rejected under 35 U.S.C. 102(b) as being anticipated by Wilson et al..

Wilson et al. have fender body 40, and first mounting assembly 30/42.

As to claims 2-3, the assembly 30/42 has common first bracket 30 for a multitude of positions.

As to claim 6, see common connectors 34 and 44.

As to claim 11, a tractor is an all terrain vehicle due to its large wheels and gearing.

As to claim 22, while illogical, Wilson et al. has common bracket 30/42 and several positions.

As to claim 29, Wilson et al. uses a wheel mount.

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later

Art Unit: 3612

invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

10. Claims 11-13, 18-20, 22-24, 26-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kalhok et al. in view of Wilson et al..

Kalhok et al. have a different all terrain vehicle as disclosed by applicant. This reference is cited to illustrate the necessity of further claim modifications if prosecution is continued.

It would have been obvious to one of ordinary skill to provide in Kalhok et al. a fender mounting assembly as taught by Wilson et al. in order to produce the fender and wheel relationship of Kalhok et al. with the additional advantage of adjustable mounting, allowing different tire sizes to be used.

As to claim 13, Kalhok et al. uses a steering knuckle mount.

11. Claims 4-5, 8-9, 14-17, 21, 25, 30-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over either Wilson et al. alone as discussed above, or Kalhok et al. in view of Wilson et al. as applied to the claims above, each rejection above in view of Mortvedt et al..

It would have been obvious to one of ordinary skill to provide in either set of references above frame mounting for the fender as taught by Mortvedt et al. in order to reduce sprung mass of the vehicle reducing shock absorber load, particularly with muddy fenders, while retaining the ability to adjust the fender position.

As to claim 5, the teachings of both Wilson et al. and Mortvedt et al. allow both.

As to claim 8, see connectors 42,54 of Mortvedt et al.

As to claim 9, bolts are common to both positions.

Art Unit: 3612

As to claim 14, see frame 12 of Mortvedt et al. and frame 12 of Kalhok et al..

As to claim 15, see locations at bolts 54 of Mortvedt et al..

As to claim 16, see locations 18 of Mortvedt et al..

As to claim 21, see brackets 34 and 38 of Mortvedt et al..

As to claim 31, use of the teachings of Wilson et al. with the original mounting assembly and the teachings of Mortvedt et al. with the second mounting assembly yields the claimed result.

As to claim 32, changing fenders is an obvious expedient to restore the vehicle after damage to the fender.

Conclusion

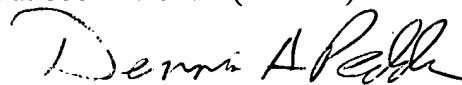
12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. All three references detail fender mounting.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dennis H. Pedder whose telephone number is (703) 308-2178. The examiner can normally be reached on 5:30-2:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenn D. Dayoan can be reached on (703) 308-3102. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 3612

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Dennis H. Pedder
Primary Examiner
Art Unit 3612

1/26/05

DHP
1/26/2005